STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEONARD FRANK BETTS,

Defendant-Appellant.

UNPUBLISHED
December 30, 1997

No. 185612
Marquette Circuit Court
LC No. 93-029085

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of kidnapping, MCL 750.349; MSA 28.581. Defendant was sentenced to eight to eighteen years' imprisonment. He now appeals as of right. We affirm.

Defendant first argues that the trial court improperly allowed one of the two police officers who arrested defendant to testify about a statement defendant had made in response to a question posed by the other officer. As the two officers were entering the victim's apartment on September 23, 1993, the victim exited the dwelling and ran off. After defendant was arrested, one of the officers asked the other where the victim had gone. Defendant then stated that the victim had run off and that he had been holding her captive. Defendant argues that testimony about this statement violated the precepts of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

In *Miranda, supra* at 444, the United States Supreme Court held that in a criminal trial, "the prosecution may not use statements . . . stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." However, not "all statements obtained by the police after a person has been taken into custody are to be considered the product of interrogation." *Rhode Island v Innis*, 446 US 291, 299; 100 S Ct 1682; 64 L Ed 2d 297 (1980).

In this case, it is undisputed that defendant was in custody at the time the statement was made, and that he had not been given his *Miranda* warnings. We conclude, however, that the single,

innocuous question posed by the officer regarding the victim's whereabouts does not qualify as a custodial interrogation such that the officer should have known that the question was "reasonably likely to elicit an incriminating response." *Innis, supra* at 301; *People v Anderson*, 209 Mich App 527, 532-533; 531 NW2d 780 (1995). The officer simply asked the other officer where the victim was. The question to which defendant responded was not even addressed to him. Further, defendant was under arrest on the charge of passing bad checks at the time, a charge unrelated to the kidnapping. Given these circumstances, the trial court did not abuse its discretion by allowing testimony about this volunteered admission by defendant. *People v Underwood*, 184 Mich App 784, 786; 459 NW2d 106 (1990).

Defendant next argues that a statement made while he was being questioned at the police station regarding other potential victims was improperly admitted into evidence. Defendant asserts that his statement was the result of custodial interrogation, and that even though he had been given his *Miranda* rights, he had not waived them when he made the statement. It is undisputed that defendant was in custody and that he had not waived his *Miranda* rights at the time he made the incriminating statement. It is also undisputed that the statement was made in response to a direct question posed by one of the arresting officers.

The prosecutor argues that, regardless, the statement was properly admitted under the public safety exception to *Miranda* first recognized in *New York v Quarles*, 467 US 649; 104 S Ct 2626; 81 L Ed 2d 550 (1984). We disagree with the prosecutor's assertion. The Court in *Quarles* specifically noted that the public safety exception applies in those circumstances "where spontaneity rather than adherence to a police manual is necessarily the order of the day . . . ." *Id.* at 656. There were no exigent circumstances present in the case at hand that would justify applying the *Quarles* exception. However, because the evidence against defendant was so overwhelming, even absent this one statement, we conclude that the admission of testimony about the statement does not require reversal.

Finally, defendant argues that rebuttal testimony by a nurse who examined the victim after defendant's arrest was improperly admitted. Defendant asserts that admission of the rebuttal testimony was improperly predicated upon a denial elicited from defendant on cross-examination. "Rebuttal evidence is admissible to 'contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same.'" *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996), quoting *People v DeLano*, 318 Mich 557, 570; 28 NW2d 909 (1947), quoting *People v Utter*, 217 Mich 74, 83; 185 NW 830 (1921). "As long as evidence is responsive to material presented by the defense, it is properly classified as rebuttal, even if it overlaps evidence admitted in the prosecutor's case in chief." *Figgures, supra*.

We conclude that the rebuttal testimony did not inject a new issue into the case and that its admission into evidence did not evidence a clear abuse of discretion on the part of the trial court. *Id.* at 398. We agree that the rebuttal testimony could not come in simply in response to a denial elicited by the prosecutor on cross-examination. *Id.* at 401. However, given the characterization defendant made during his direct examination about the nature of his relationship to the victim, the rebuttal testimony was properly admitted. Once defendant tried on direct examination to paint a picture of himself as the victim

of persistent physical abuse inflicted by his kidnapping victim, "he opened the door to the presentation of further evidence bearing on the actual state of their

relationship . . . ." *Id.* at 399-400, quoting *People v Schwerbel*, 638 NYS2d 198, 199 (NY App Div, 1996).

We affirm.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Richard A. Bandstra